

§ 164.506

plan sponsor consistent with the requirements of this subpart.

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(iii) The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.

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§ 164.506 Consent for uses or disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Consent requirement.* (1) Except as provided in paragraph (a)(2) or (a)(3) of this section, a covered health care provider must obtain the individual's consent, in accordance with this section, prior to using or disclosing protected health information to carry out treatment, payment, or health care operations.

(2) A covered health care provider may, without consent, use or disclose protected health information to carry out treatment, payment, or health care operations, if:

(i) The covered health care provider has an indirect treatment relationship with the individual; or

(ii) The covered health care provider created or received the protected health information in the course of providing health care to an individual who is an inmate.

(3)(i) A covered health care provider may, without prior consent, use or disclose protected health information created or received under paragraph (a)(3)(i)(A)–(C) of this section to carry out treatment, payment, or health care operations:

(A) In emergency treatment situations, if the covered health care provider attempts to obtain such consent as soon as reasonably practicable after the delivery of such treatment;

(B) If the covered health care provider is required by law to treat the individual, and the covered health care provider attempts to obtain such consent but is unable to obtain such consent; or

(C) If a covered health care provider attempts to obtain such consent from

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the individual but is unable to obtain such consent due to substantial barriers to communicating with the individual, and the covered health care provider determines, in the exercise of professional judgment, that the individual's consent to receive treatment is clearly inferred from the circumstances.

(ii) A covered health care provider that fails to obtain such consent in accordance with paragraph (a)(3)(i) of this section must document its attempt to obtain consent and the reason why consent was not obtained.

(4) If a covered entity is not required to obtain consent by paragraph (a)(1) of this section, it may obtain an individual's consent for the covered entity's own use or disclosure of protected health information to carry out treatment, payment, or health care operations, provided that such consent meets the requirements of this section.

(5) Except as provided in paragraph (f)(1) of this section, a consent obtained by a covered entity under this section is not effective to permit another covered entity to use or disclose protected health information.

(b) *Implementation specifications: General requirements.* (1) A covered health care provider may condition treatment on the provision by the individual of a consent under this section.

(2) A health plan may condition enrollment in the health plan on the provision by the individual of a consent under this section sought in conjunction with such enrollment.

(3) A consent under this section may not be combined in a single document with the notice required by § 164.520.

(4)(i) A consent for use or disclosure may be combined with other types of written legal permission from the individual (*e.g.*, an informed consent for treatment or a consent to assignment of benefits), if the consent under this section:

(A) Is visually and organizationally separate from such other written legal permission; and

(B) Is separately signed by the individual and dated.

(ii) A consent for use or disclosure may be combined with a research authorization under § 164.508(f).

(5) An individual may revoke a consent under this section at any time, except to the extent that the covered entity has taken action in reliance thereon. Such revocation must be in writing.

(6) A covered entity must document and retain any signed consent under this section as required by § 164.530(j).

(c) *Implementation specifications: Consent requirements.* A consent under this section must be in plain language and:

(1) Inform the individual that protected health information may be used and disclosed to carry out treatment, payment, or health care operations;

(2) Refer the individual to the notice required by § 164.520 for a more complete description of such uses and disclosures and state that the individual has the right to review the notice prior to signing the consent;

(3) If the covered entity has reserved the right to change its privacy practices that are described in the notice in accordance with § 164.520(b)(1)(v)(C), state that the terms of its notice may change and describe how the individual may obtain a revised notice;

(4) State that:

(i) The individual has the right to request that the covered entity restrict how protected health information is used or disclosed to carry out treatment, payment, or health care operations;

(ii) The covered entity is not required to agree to requested restrictions; and

(iii) If the covered entity agrees to a requested restriction, the restriction is binding on the covered entity;

(5) State that the individual has the right to revoke the consent in writing, except to the extent that the covered entity has taken action in reliance thereon; and

(6) Be signed by the individual and dated.

(d) *Implementation specifications: Defective consents.* There is no consent under this section, if the document submitted has any of the following defects:

(1) The consent lacks an element required by paragraph (c) of this section, as applicable; or

(2) The consent has been revoked in accordance with paragraph (b)(5) of this section.

(e) *Standard: Resolving conflicting consents and authorizations.* (1) If a covered entity has obtained a consent under this section and receives any other authorization or written legal permission from the individual for a disclosure of protected health information to carry out treatment, payment, or health care operations, the covered entity may disclose such protected health information only in accordance with the more restrictive consent, authorization, or other written legal permission from the individual.

(2) A covered entity may attempt to resolve a conflict between a consent and an authorization or other written legal permission from the individual described in paragraph (e)(1) of this section by:

(i) Obtaining a new consent from the individual under this section for the disclosure to carry out treatment, payment, or health care operations; or

(ii) Communicating orally or in writing with the individual in order to determine the individual's preference in resolving the conflict. The covered entity must document the individual's preference and may only disclose protected health information in accordance with the individual's preference.

(f)(1) *Standard: Joint consents.* Covered entities that participate in an organized health care arrangement and that have a joint notice under § 164.520(d) may comply with this section by a joint consent.

(2) *Implementation specifications: Requirements for joint consents.* (i) A joint consent must:

(A) Include the name or other specific identification of the covered entities, or classes of covered entities, to which the joint consent applies; and

(B) Meet the requirements of this section, except that the statements required by this section may be altered to reflect the fact that the consent covers more than one covered entity.

(ii) If an individual revokes a joint consent, the covered entity that receives the revocation must inform the other entities covered by the joint consent of the revocation as soon as practicable.

EFFECTIVE DATE NOTE: At 67 FR 53268, Aug. 14, 2002, § 164.506 was revised, effective Oct. 15,

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2002. For the convenience of the user, the revised text is set forth as follows:

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Permitted uses and disclosures.* Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) *Standard: Consent for uses and disclosures permitted.* (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent, under paragraph (b) of this section, shall not be effective to permit a use or disclosure of protected health information when an authorization, under § 164.508, is required or when another condition must be met for such use or disclosure to be permissible under this subpart.

(c) *Implementation specifications: Treatment, payment, or health care operations.*

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

(3) A covered entity may disclose protected health information to another covered entity or a health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

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§ 164.508 Uses and disclosures for which an authorization is required.

(a) *Standard: Authorizations for uses and disclosures.* (1) *Authorization required: General rule.* Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

(2) *Authorization required: psychotherapy notes.* Notwithstanding any other provision of this subpart, other than transition provisions provided for in § 164.532, a covered entity must obtain an authorization for any use or disclosure of psychotherapy notes, except:

(i) To carry out the following treatment, payment, or health care operations, consistent with consent requirements in § 164.506:

(A) Use by originator of the psychotherapy notes for treatment;

(B) Use or disclosure by the covered entity in training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or

(C) Use or disclosure by the covered entity to defend a legal action or other proceeding brought by the individual; and

(ii) A use or disclosure that is required by § 164.502(a)(2)(ii) or permitted by § 164.512(a); § 164.512(d) with respect to the oversight of the originator of the psychotherapy notes; § 164.512(g)(1); or § 164.512(j)(1)(i).

(b) *Implementation specifications: General requirements—(1) Valid authorizations.*

(i) A valid authorization is a document that contains the elements listed in paragraph (c) and, as applicable, paragraph (d), (e), or (f) of this section.

(ii) A valid authorization may contain elements or information in addition to the elements required by this section, provided that such additional